IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 911 OF 2002

Bapu Gopala Sabale
(Deceased through legal heirs)
Sou. Parvati Keshav Kadam
and ors. ..Appellants
(Org. Plaintiffs)

Vs.

Shri Sambhaji Dhondi Sabale
and ors. ..Respondents

Mr. V.B. Rajure for appellants.

CORAM: B.H. MARLAPALLE, J.

Date : March 14, 2007.

P.C.:

1. Heard Mr. Rajure the learned counsel for the appellants-original plaintiffs. Late Shri Bapu Gopala Sable had filed Regular Civil Suit No. 7 of 1989 praying for perpetual injunction against the defendants 2 to 5 from digging a well in the land bearing Gat No.1501 situated at village Khupere, Taluka Karveer in Kolhapur District. The said land was purchased by defendant nos.2 to 5 from defendant no.1. and the plaintiffs were the owner of the

adjacent Gat No.1500. Both the lands were of equal size i.e. 30 ft. x 135 ft. It was contended by the plaintiff that before starting to dig a well, the permission from the Tahsild Office was necessary and the defendants could not dig a well within a distance of 100 ft. from the plaintiff's well existing in the land bearing Gat No.1500. The learned 6th Joint Civil Judge, Junior Division at Kolhapur vide his Judgment and Order dated 24/1/1995 answered both these issues in the negative and dismissed the suit. The plaintiffs, therefore, challenged the said dismissal order in Regular Civil Appeal No. 276 of 1995, which came to be dismissed by the learned Additional District Judge, Kolhapur on 5/7/2001. This appeal has been waiting for admission during last about six years.

2. There is no reason to believe that the defendants have not yet dug the well during the last more than six years and, therefore, the challenge to both the concurrent decrees passed by the courts below has become stale. Consequently, no substantial questions of law would arise for the consideration of

this court.

3. Hence, the second appeal is dismissed in limine.

(B.H. Marlapalle,J.)